



## **MINUTES OF THE LAND RECLAMATION COMMISSION MEETING**

July 24, 2003

Chairman Ted A. Smith called the meeting to order at 10:00 a.m. at the Missouri Department of Natural Resources, 1738 East Elm Street, Jefferson City, Missouri.

**Commissioners Present:** Ted A. Smith; Jim DiPardo; Hugh Jenkins; Mimi Garstang; Jim Hull; Gerald Ross; and Dr. Carol Wicks.

**Staff Present:** Larry Coen; Tom Cabanas; Richard Hall; Mike Larsen; Bill Zeaman; Larry Hopkins; Tim Thorn; Richard O'Dell; Rexroy Scott; Brian Hicks; Teri Walker; and Shirley Grantham.

**Others Present:** Amy Randles and Deborah Neff, Attorney General's Office; John W. Coleman, Office of Surface Mining; Kim Dickerson, Pat Mills, Mike Giovanini, James Rolls, and Dan Urp, Associated Electric Coop., Inc.; Randy Scheer, Mining Industry Council; Mike Carlson, Gredell Engineering; Jerry Gregg, Riverstone Group, Inc.; John Young; Greg Sharp; Dennis Stinson and Lon O'Bannon, Hazardous Waste Management Program, MDNR; Phil Schroeder and Greg Anderson, Water Pollution Control Program, MDNR; Mike Toelle, Nancy Tully, Eric Ervin, and Keith Klein, Holcim; Yvonne Homeyer, Webster Groves Nature Study Society; Ted Heisel, Missouri Coalition for the Environment; Susan Kliethermes, Lathrop & Gage; Carla Klein, Sierra Club; James Woolsey, Woolsey Farms; Maxine Lipeles and other representatives, Washington University Environmental Clinic; Irma Norman, Sierra Club, Illinois Chapter; and Jake Reinbold, Brydon, Swearingen & England.

### **1. MINUTES OF THE MAY 22 AND JUNE 3, 2003, MEETINGS**

Mr. DiPardo made the motion to approve the Minutes as written. Dr. Wicks seconded; motion carried unanimously.

### **2. ABANDONED MINE LAND ACTIVITIES**

**AML Status Report** (Attachment 1). Mr. Cabanas presented this report to the Commission. He noted that the two bids received for the Perche Creek Project were over the engineer's cost estimate, so it will have to be rebid. The prebid meeting is scheduled for July 29. The Lemons Load-Out Facility reclamation has been completed.

Mr. Smith asked regarding funding for this year, is it planned to move ahead with the available funds?

Mr. Cabanas stated the plans were to move ahead with the projects scheduled. There is reserve funding built in in case the AML Program is lost due to the loss of the Coal Regulatory Program. There are still monies available in reserve to continue to do work on some projects for a couple of years. Whether or not the AML Program stays is dependent upon the reauthorization of the regulatory program.

3. PERMIT ISSUES

**Request for Hearing – Woolsey Farms** (Attachment 2). Mr. Zeaman stated that on April 17, 2003, the Program received a new in-stream permit application from Woolsey Farms that proposes to remove sand and gravel on a total of 3 acres in Texas County. The proposed operation time frame is to the year 2043. The proposed 3-acre in-stream mining operation is separated into two separate sites: a 1-acre site in Pine Branch and a 2-acre site in the north prong of Jacks Fork. After the application was deemed complete, the applicant published the required public notice and also sent by certified mail a notice of intent to operate a surface mine to the appropriate planning officials and adjoining landowners. During the public comment period, the Program received one letter concerning the proposed Woolsey Farms new permit application. There are concerns surrounding this proposed in-stream mining application. The Land Reclamation Act addresses the issues of public notification requirements, mining and the environment, request for a hearing, and legal description requirements. The Missouri Department of Natural Resources has laws that address water pollution, operations discharging water into “Outstanding National Resource Waters” and “Impaired Waters List.” There was a concern that if a Land Reclamation Commission permit were to be issued in the watershed if an “Outstanding National Resource Waters,” the permit would be of little value to an operator because of a conflict with the rules that govern the Department’s Water Pollution Control Program. After close coordination with the Department’s Water Pollution Control Program, the Department has assurance that a Land Reclamation Commission permit will not be in conflict with the Clean Water Act if specific methods of sand and gravel removal are adhered to. Those methods of sand and gravel removal are outlined in the Staff Director’s recommendation. Woolsey Farms has completed all the requirements to obtain a permit under the Land Reclamation Act. Therefore, after consideration of the issues and comments stated in the letter from the petitioner, it is the Staff Director’s recommendation to issue a new permit application involving a total of 3 acres in Texas County to Woolsey Farms. The recommendation for approving this application is based on the conclusion that a person’s health, safety, or livelihood will not be unduly impaired by the issuance of this permit. The balancing test stated in the declaration policy of The Land Reclamation Act, Section 444.762, RSMo, does not weigh against the surface mining of minerals in this instance; therefore, the recommendation is to approve this application.

The petitioner requesting the hearing was not present at the meeting.

Mr. Woolsey, Woolsey Farms, stated he would abide by the rules in mining the gravel. He stated the farm has been homesteaded by the family since the 1800's. At what time did he lose the right to his gravel?

Ms. Garstang asked whether there are any concerns about permitting this operation with regard to the new rules that are now starting through the process of being considered.

Mr. Larsen stated the conditions that the Staff Director has applied to this permit application closely mirror what will be required in the new rules. Those conditions come as a result of coordination with the Water Pollution Control Program and what they would accept as permit conditions for this operation. Mr. Larsen stated he feels they are safe conditions and should safeguard the water quality of the stream.

Mr. Ross stated he agreed that the restrictions or criteria are straightforward and doable. He noted what he did not see was any reference to just a narrow buffer at the water's edge as far as a 10-foot buffer. He did note that the operator indicated the bank would not be disturbed.

Mr. Larsen stated the conditions do state that the equipment will not contact the water or operate in such a manner that it would spill any type of gravel into the water beds.

Mr. DiPardo asked Mr. Woolsey if he currently mines gravel at any other sites in Missouri or whether this is a new startup site?

Mr. Woolsey stated he used gravel for his farm and did sell some in the 1960's and early 1970's.

Dr. Wicks made the motion that the Commission accept the staff's recommendation and grant the permit to Woolsey Farms and deny the request for a hearing. Mr. DiPardo seconded; motion carried unanimously.

**In Re: Holcim (US) Inc., Permit Application 0858.** Mr. Smith stated the Commission has been in closed session reviewing the issues on Holcim. Unfortunately, some of the materials which the Commission needed to be able to make its decision were not received until late because it was not released by the Administrative Hearing Commission to the Program for distribution to the Commission. The Commission has questions of the Hearing Officer who presided at the Holcim hearing. The Hearing Officer has had surgery and is not available to answer those questions today. Therefore, the Commission will not discuss the Holcim issue today. The Commission will reschedule this issue as soon as possible, hopefully, by mid August.

**Update of Permitting Reviews** (Attachment 3). Mr. Cabanas presented this update to the Commission. He noted that an application was received from Continental Coal for a new coal mine called the Cottonwood Creek Mine. The completeness review has been completed by the Program staff. The follow-up review for that mine has been sent to the Office of Surface Mining who will continue with the adequacy review and whatever other action is required.

Mr. Smith asked how will the pending requests for coal permit related reviews be handled?

Mr. Cabanas stated that, at this time, those items will not be handled by the staff. All active coal program reviews have been terminated. Any future permit reviews will probably be handled by the Office of Surface Mining. There is not available funding to continue the active coal program at this time.

Dr. Wicks asked if these review items would be put aside?

Mr. Coleman, Office of Surface Mining, stated it is in the process of reviewing the letter it received from the Governor's Office. The letter was quite vague and somewhat incomplete. The Office of Surface Mining is in the process of replying to that letter and requesting that the Governor identify certain things to bring into the budget. In the meantime, the Office of Surface Mining is going forward with a 732 action to take over those items. Mr. Coleman stated it is his desire to copy the Program's files which relate to permit revisions and bond releases to be transferred to his office. He noted a review committee has already been set up to handle the new Continental Coal Cottonwood Creek review. No specific assignments have been set up for the permit revisions. As far as the grant is concerned, the existing annual grant, as well as portions of Title V grant, has been extended for 30 days, ending July 31. It is expected that the Program will request an extension of another 30 days and possibly another 30 days as it is determined where we are going with this. In the meantime, OSM is going forward to review these various types of applications in priority order. OSM will meet with the various companies to have them identify those priorities that are most significant at this time. It is the goal that the coal program be re-established, hopefully, next year.

#### 4. **MINING ENFORCEMENT ACTIONS**

**Consent Order, Midwest Coal, L.L.C.** (Attachment 4). Mr. Hall stated that on October 12, 2001, Show Cause Order (SCO) 2466 was issued to Midwest Coal, L.L.C. The SCO was subsequently amended on July 2, 2002. The SCO was originally issued as a result of alleged patterns of violation and Cessation Orders. The company requested a hearing before the Land Reclamation Commission to contest the SCO. A copy of the SCO was also sent to the company's bond provider. The bond provider indicated a desire to settle

the Show Cause Order without going through the formal hearing process and to be allowed to perform reclamation at the mine site in lieu of bond collection. Mr. Hall stated this was agreed to by Midwest Coal and resulted in the Consent Order. All parties, except the Commission, have signed the Consent Order. The Consent Order is not a reclamation plan for the site, but it sets forth the process by which the revised reclamation plan will be developed and implemented. The Consent Order also resolves outstanding penalties assessed against Midwest Coal. Therefore, the Staff Director recommends the Commission approve and sign the Consent Order as presented.

Dr. Wicks made the motion the Commission approve the Consent Order as presented for Midwest Coal, L.L.C. Mr. Ross seconded; motion carried unanimously.

**Agreement of the Land Reclamation Program Director, Surety Companies, and Indemnitor In Re Certain Reclamation Bonds of Alternate Fuels, Inc.** (Attachment 5). Mr. Coen stated a Show Cause Hearing was held in April to revoke Alternate Fuels' Permits 1990-01, 1991-02, and 1996-01. It is anticipated a decision will be made by the hearing officer in the near future. In the meantime, three of the sureties who posted bond for long periods of time on two of three permits indicated an interest in signing a settlement agreement that would allow the sureties to do the reclamation in lieu of forfeiting the bonds in the event that Permits 1990-01 and 1991-02 are revoked. Mr. Coen noted this agreement is only for the Commission's information at this time so that it can see what the Program is doing. If the decision from the hearing is to revoke the permits, then the Commission will be asked to sign an Order that invokes the above agreement so that reclamation can be completed.

Mr. Smith asked when the Commission might know what the decision is from the hearing?

Ms. Neff stated the hearing has concluded, and the respective attorneys will submit Post-Hearing Briefs and Findings of Fact and Conclusions of Law. Once these documents have been filed with the hearing officer, it should not take a very long time, perhaps September or October for a decision. Ms. Neff also noted that the Commission should read through the above Agreement to see if the terms are acceptable to the Commission. The Commission's options would be to accept the Agreement as is, reject the whole thing, or accept it if certain terms are modified. If the decision is against the Program, the Agreement would not go into effect.

**Settlement Agreement, Hilty Quarries, Inc.** (Attachment 6). Mr. Larsen stated that during the January 2001, meeting, the Commission signed a Notice of Formal Complaint for this company. The Formal Complaint was in response to the company's failure to abate two Notices of Violation issued to it in August of 2000. These violations addressed

both inadequate protection of existing topsoil stockpiles and inadequate efforts to salvage available topsoil prior to mining. Mr. Larsen stated Hilty Quarries requested a hearing be held concerning the Formal Complaint. This hearing was granted by the Commission in March 2001. Since that date, negotiations have been conducted with the company, the Attorney General's Office, and the Land Reclamation Program staff in an effort to resolve the matter of the two violations and to reach a mutually agreeable settlement on the Formal Complaint. Earlier this year, inspections of the sites where the violations were issued were conducted. They revealed that the company had abated the violation concerning inadequate protection of the topsoil stockpiles and that the company's efforts in salvaging available topsoil prior to mining had greatly improved. Following these inspections, additional negotiations continued with the company which resulted in a settlement agreement to resolve the two Notices of Violation and the Formal Complaint. Final approval of the settlement agreement by the Commission is necessary to complete this process. Upon completion of this step, the staff will terminate Notices of Violation 119-001 (inadequate topsoil stockpile protection) and 119-002 (failure to salvage sufficient topsoil, following receipt of the necessary additional topsoil bonding in order to resolve this violation). Therefore, the staff is recommending that the Commission approve and sign the settlement agreement for Hilty Quarries.

Ms. Garstang made the motion the Commission approve the Settlement Agreement as presented for Hilty Quarries, Inc. Dr. Wicks seconded; motion carried unanimously.

**Enforcement Action Tracking Report** (Attachment 7). Mr. Cabanas presented this report to the Commission. He noted that after the meeting today, subsequent reports will not reflect any enforcement actions for coal, as the inspection and enforcement responsibilities will be taken over by the Office of Surface Mining. In terms of the enforcement actions for coal currently not abated and pending, the staff is working with counsel on how to handle these.

Mr. Smith asked how do all of the enforcement actions against, say, Alternate Fuels fit in with the settlement agreement and how many of those are covered?

Mr. Cabanas stated that with regard to the agreement earlier presented to the Commission today, it does not deal with any of the enforcement actions. That agreement is between the Commission and the surety companies. The enforcement actions will be resolved by the Hearing Officer's decisions as a result of the Show Cause Hearing.

5. **BOND RELEASE REQUESTS**

**Industrial Minerals:**

**Summary of Industrial Minerals Bonds Released by Staff Director** (Attachment 8).

Mr. O'Dell presented this report to the Commission. He stated the Staff Director has reviewed, evaluated, and approved several Industrial Minerals bond release requests since the May 2003 Commission meeting. The requests are for a total of 5 acres of development land for Ste. Genevieve County, at Site #1 for a total release amount of \$8,000.00; a total of 26 acres for Harbison Walker Refractories for a total release amount of \$13,000.00, consisting of 3 acres pasture and 2 acres water at the Wetherall #2 site, 3 acres pasture and 1 acre water at the Earl Lewis #7 site, 4 acres pasture and 1 acre water at the Ralph Kelsick # 2 site, 4 acres recreational and 1 acre water at the Juergensmeyer #11 site, 3 acres recreational and 2 acres water at the August Meyer #8 site, and 1 acre pasture and 1 acre water at the Jett # 1 site.

**Coal:**

**Associated Electric Coop., Inc., NEMO Mine, Permit 1983-16, PP-02-14** (Attachment 9). Mr. Zeaman stated this release request is for a Phase III release on 23.5 acres (known as the Ponderosa) which would total \$11,750.00. A field inspection conducted in April 2003 revealed that the previously mined pasture and pasture area has permanent vegetation sufficient to control erosion. Proof of soil productivity was approved in June 2003. The water impoundment, consisting of 1.5 acres, has good water quality and is constructed and maintained according to design standards. The land is capable of supporting the post mining land use. Associated Electric has successfully completed all surface coal mining and reclamation operations in accordance with the approved reclamation plan which qualifies the area to receive a Phase III Permanent Program liability release. This is a final release in bond money associated with this permit. Associated Electric has achieved compliance with the requirements of the law, the regulatory program, and the permit and has met the performance requirements for release of Phase III liability on the remaining portion of Permit 1983-16 at the NEMO Mine. The staff therefore recommends approval of this bond release request.

Mr. Ross made the motion for approval of the above bond release request for Associated Electric Coop., Inc., NEMO Mine, as presented. Dr. Wicks seconded; motion carried unanimously.

**Vernon County Crushed Stone, Permit OL92-39, OL-03-001** (Attachment 10). Mr. Hall stated Vernon County Crushed Stone is an Old Law operator. This release request is for grading/vegetation on 5 acres of pasture and constitutes final release of the permit and bond. The total amount of the release is \$3,500.00. The "Old Law" grading requirements state that the site must be graded to rolling topography, with slopes no steeper than the pre-mined contours, removal of large rock and other debris that might interfere with the use of that property, covering of acid and toxic materials to prevent acid

drainage from developing. Mr. Hall stated revegetation requirements are to develop a permanent vegetative cover consistent with the post-mining land use plan for the area that is capable of controlling erosion on the site. Vernon County Crushed Stone has met all of the performance requirements for Old Law grading and vegetation release. Therefore, the staff recommends approval of this bond release request.

Dr. Wicks asked how many “Old Law” sites are still in operation?

Mr. Hall stated Vernon County Crushed Stone is the last one.

Mr. Ross asked whether the staff is being timely on bond release requests?

Mr. Coen stated the staff was timely until the recent staffing reduction.

Mr. Hull made the motion for approval of the above bond release request for Vernon County Crushed Stone, as presented. Mr. DiPardo seconded; motion carried unanimously.

6. **OTHER BUSINESS**

**Presentation of Employee Resolutions.** Resolutions were presented to Dennis Stinson, Greg Anderson, Greg Sharp, and Lon O’Bannon for their commitment and dedication to the protection of the environment and a job well done on behalf of the Land Reclamation Commission and the people of the State of Missouri.

**Land Reclamation Program Employee of the Month for June** – Mr. Coen noted the LRP Employee of the Month for June was Bill Zeaman.

**Discussion Regarding Program Funding and Staffing** (Attachment 11). Mr. Coen stated the budget bill, House Bill 6, reduced the staffing for the Land Reclamation Program from 36 to 28 full-time employees and reduced the Program’s general revenue. He stated what is understood that the Legislature intended to do was to fund 28 staff and to return the coal regulatory program to the Office of Surface Mining (OSM). That is something that would continue to happen and protect Missouri. The Legislature also intended for the Program to do bond forfeiture, metallic minerals, industrial minerals, and abandoned mine lands (AML). However, the coal regulatory program cannot be given up and still do AML. As a result of the Legislature’s actions, the Program staff was actually reduced to 24 instead of 28. Because those four positions were not funded, staff cannot be hired to fill those positions. That happened because general revenue that was taken away was going to be matched by federal funds. The Program did not receive either the general revenue or the federal funds for the four positions. Therefore, the Program is



forced to notify OSM that it will not be able to do the coal regulatory program this year. Mr. Coen stated there are 4 staff to do bond forfeiture, 1.8 staff to do metallic minerals, 6.6 staff for industrial minerals, and 11.6 staff for AML. AML has been federally funded, and all of this is at risk without an approved coal regulatory program. The coal regulatory program requires staffing and funding which was taken away. There are probably ways that the Program could manage the loss of general revenue, but because the Legislature took the positions and the money out of the budget, there is absolutely no way for the Program to fix that this year. The Legislature is the body that would have to fix this.

Mr. Coen stated pending coal permit applications/revisions will not get done. These have been transferred to OSM for final action. The Program has not been in this position before and is taking things one step at a time. OSM has been very helpful. Unfortunately, this will result in a delay for the coal operators. Between what OSM and the Program can do, the work will get done, however, later rather than sooner. Mr. Coen stated inspections and enforcement will not get done by the Program. OSM will do them as they can. The Program will continue to work on the bond forfeited areas.

Mr. Coen stated Missouri has accomplished a number of good things in the coal regulatory program: 1) conducted over 5,400 inspections since 1992; 2) conducted 249 inspections of surface coal mining sites in fiscal year 2003; 3) addressed over 2,100 violations since 1978; 4) responded to over 85 citizen complaints since 1984; 5) ensured complete, productive reclamation of over 8,000 acres of land mined for coal since 1982; and 6) accepted responsibility to reclaim an additional 8,000+ acres of land mined for coal that were abandoned by coal permit holders since 1982. The Program has been able to turn mined ground into an area that appears to have never been mined before. That is the goal of the Program.

Mr. Coen stated at risk for the future is the AML Program without a coal regulatory program. No one else will do this type of work unless we do it. There are funds available that would allow the AML Program to phase its work out over a period of 1-2 years rather than abruptly being cut off in the middle of projects. The AML Program has also made numerable accomplishments: 1) completed 110 abandoned mine land projects; 2) reclaimed 4,000 acres of barren and eroding mine lands in 22 counties; 3) closed 181 coal mine vertical shafts; 4) eliminated 87,671 feet of vertical highwall; 5) abated 50 polluted water incidents; and 6) eliminated 70 acres of trash dumps that created health hazards. Nearly all of these areas were on private lands owned by Missouri citizens, and these lands were reclaimed at no cost to the landowners. Mr. Coen also noted the AML Program has spent \$6 million on protecting streams from acid mine drainage.

Mr. Coen stated that over \$41 million has been spent on AML work, which is only about one-half of the work needed to be done. The worst sites have been addressed first.

Mr. Coen stated the way to resolve the budget problem really depends on the Missouri Legislature and some policy decisions that are far above anything the Program can control. The Program is currently funded to do metallic minerals, industrial minerals, bond forfeiture reclamation and, in the immediate future, abandoned mine lands reclamation, but not funded to do coal regulatory work.

Mr. Coen stated there could be several options to bring about a resolution such as OSM providing the funding if the Legislature is willing to provide the staff needed; the Department has some policy decisions on what they want to do for a coal regulatory program; Missouri could decide they do not want to do coal mining anymore. It is certainly the Program's desire that things get fixed so that it can take care of the environment related to coal mining, both active and for AML. The Program does not really have a way to cause that to happen, but are totally dependent on the actions of others and the policy decisions that they make. The Program is hopeful that OSM will be able to work with the staff during the next several months until the Program can go back to the Legislature. Meanwhile, the Program will do what it can do.

Mr. Smith stated the Commission supports the staff and appreciates their staying with the Program. When the Commission sees what can be done by operators who are doing the type of work to bring the lands back into shape and also the work done to close dangerous mine shafts, it is worth the time to make it happen. The full Commission is present today and that should be a show of support to the Program that we want to make things happen and support the Program in its efforts and to try to bring this program back.

Mr. John Coleman, Office of Surface Mining, stated that the Program has submitted a revised grant which is being reviewed by his staff as well as the staff in Washington, D.C., and the solicitors. By law, there are certain constraints on how OSM can fund certain things. That is what it is analyzing now—to what extent can it fund an enforcement program. That funding will determine how OSM will deal with the AML portion.

**Closed Session.** Ms. Garstang made the motion that the Land Reclamation Commission meet in Closed Session at 8:30 a.m. on September 25, 2003, for the purpose of discussing personnel actions and legal actions, causes of actions, or litigation as provided for in Section 610.021, RSMo. Mr. Hull seconded; motion carried unanimously.

**Adjournment.** The meeting was adjourned at 11:30 a.m.

Respectfully submitted,

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Chairman